

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BRYAN MONTERO, et al.,

Plaintiffs,

v.

PRIMO HOME SERVICES INSTALLATION,  
INC., et al.,

Defendants.

23 Civ. 7340 (DEH)

**ORDER**

DALE E. HO, United States District Judge:

The parties have reached a settlement on all issues, following mediation through the District’s Mediation Program. In the Second Circuit, “parties cannot privately settle FLSA claims with a stipulated dismissal with prejudice under Federal Rule of Civil Procedure 41 absent the approval of the district court or the Department of Labor.” *Fisher v. SD Prot. Inc.*, 948 F.3d 593, 599-600 (2d Cir. 2020) (outlining the factors that district courts have used to determine whether a proposed settlement and award of attorneys’ fees is fair and reasonable); *see also Cheeks v. Freeport Pancake House, Inc.*, 796 F.3d 199, 206–07 (2d Cir. 2015). On May 10, 2024, the parties file a joint motion for approval of their settlement agreement. *See* ECF No. 29. An order issued on May 21, 2024, denied the motion, without prejudice to renewal. *See* ECF No. 30. On May 31, 2024, the parties renewed their joint motion. *See* Mot. for Approval, ECF No. 31.

It is hereby **ORDERED** that the parties’ motion for approval of their settlement is **GRANTED**. The settlement payment totals \$20,000. *See id.* Ex. A (Settlement Agreement) at 1, ECF No. 31-1. Of this, \$7,062 will go to Plaintiffs’ attorneys for their fees and costs. *See id.* at 3(a)(ii), 3(b)(iv), 3(c)(iv), 3(d)(iv). This is 35.31% of the total settlement fund, which is in line with fee awards in FLSA cases typically approved by courts in this District. *See Zorn-Hill v.*

*A2B Taxi LLC*, No. 19 Civ. 1058, 2020 WL 5578357, at \*6 (S.D.N.Y. Sept. 17, 2020) (“[C]ourts routinely award attorney’s fees in FLSA settlements of one-third of the total recovery.”); *Hidalgo v. Torti Food Corp.*, No. 22 Civ. 10668, 2024 WL 1500819, at \*2 (S.D.N.Y. Mar. 13, 2024) (“[A]ttorneys’ fees in FLSA settlements often are approximately one-third of the total settlement amount.”). The remaining settlement funds will be evenly distributed between the two Plaintiffs and Nicholas Torres, a potential opt-in Plaintiff, meaning each would receive \$4,312.66. *See* Mot. for Approval at 5. Plaintiffs estimate that this represents around 51% of their total unpaid overtime wages (not including any liquidated damages or statutory penalties). *See id.* at 4. Due to FLSA’s provisions for liquidated damages, “double damages are the norm and single damages the exception.” *Barfield v. N.Y.C. Health & Hosps. Corp.*, 537 F.3d 132, 150 (2d Cir. 2008). Therefore, minus any statutory penalties, Plaintiffs are receiving around 25% of their total damages. This is in line with settlements approved in this District. *See, e.g., Kim v. Choi*, No. 19 Civ. 8911, 2021 WL 1759830, at \*1 (S.D.N.Y. May 4, 2021) (approving settlement where the plaintiffs would receive around 21% of their total potential recovery); *Beckert v. Ronirubinov*, No. 15 Civ. 1951, 2015 WL 8773460, at \*2 (S.D.N.Y. Dec. 14, 2015) (approving settlement where Plaintiff would receive approximately 26% of their total potential recovery). Finally, the Court finds that the record does not indicate any possibility of fraud or collusion or any indication that the settlement agreement was not a product of arm’s-length bargaining. *See Fisher*, 948 F.3d at 600. Accordingly, the settlement is approved as fair and reasonable.

In connection with their motion for approval, the parties included a stipulated agreement to dismiss the case as an attachment. *See* Settlement Agreement, Ex. A. It is hereby **ORDERED** that the parties shall file the stipulation on ECF, in accordance with the conditions

listed in Paragraph 2 of the parties' settlement agreement, for so ordering. *See id.* at 2. The parties shall do so no later than **June 21, 2024**.

The Clerk of Court is respectfully directed to close the motion at ECF No. 31.

SO ORDERED.

Dated: June 6, 2024

New York, New York

A handwritten signature in black ink, appearing to read "Dale Ho", is written above a horizontal line.

DALE E. HO  
United States District Judge